

11-9-06

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NUMBER
	:	
PATRICK LIEBL and	:	06-73560-MGD
KATHERINE LIEBL,	:	
	:	
Debtors.	:	CHAPTER 7

**ORDER DENYING DEBTORS' APPLICATION
FOR WAIVER OF THE CHAPTER 7 FILING FEE**

This case came before the Court on Debtors' Application for Waiver of the Chapter 7 Filing Fee ("Application"), (Docket No. 5), which was filed contemporaneous with Debtors' Chapter 7 petition on October 30, 2006. Upon consideration of Debtors' Application for Waiver of the Chapter 7 Filing Fee, and for the reasons set forth below, Debtors' Application is **DENIED**.

Debtors' Application states that Debtors' family size is three (3) however, Schedule I, filed with Debtor's Chapter 7 petition, does not reflect any dependents; regardless, the Court has analyzed Debtors' Application based on Debtors having a family size of 3. To be eligible for a waiver of the Chapter 7 filing fee under 28 U.S.C. § 1930(f), Debtors' annual income must be less than \$24,900, which is 150% of the official poverty line for a family of 3.¹

While Debtors' Application and Schedules indicate that Debtors have a total combined monthly income of \$1280 per month, Debtors' pay advices indicate otherwise. On Schedule I, Debtors indicate that their monthly gross wages are \$2500, with payroll taxes of \$770 and other deductions totaling \$450, for a monthly net income of \$1280. These figures are inconsistent with the Pay Advices filed by Debtors on November 2, 2006, (Docket Nos. 8 and 9), which consist of (1) Mr. Liebl's earnings statements dated 09/08/2006, 09/15/2006, 09/22/2006, 09/29/2006, 10/06/2006, 10/13/2006, 10/20/2006,

¹ The official poverty line, set by the United States Department of Health and Human Services, applicable to a family of 3 is \$16,600. Available at <http://www.aspe.hhs.gov/poverty/06poverty.shtml>.

and 10/27/2006 that were issued by Nail Heating and Air and (2) Mrs. Liebl's earnings statements dated 09/01/2006, 09/16/2006, 10/02/2006, and 10/16/2006 that were issued by Stockbridge Veterinary Hospital. The Court considers Debtors' Pay Advices to be the most reliable source of information regarding Debtors' income.

Debtors' Pay Advices reveal that Mr. Liebl is paid every week and Mrs. Liebl is paid every 2 weeks. Both Debtors' pay varies slightly during each pay period based on the number of hours worked. Because the current earnings reflected on Debtors' Pay Advices are not substantially consistent with the year-to-date earnings reflected on the Pay Advices, Debtors' annual income will be calculated using both Debtors' average earnings and Debtors' year-to-date earnings. Based on the twelve earnings statements provided, Debtors' combined average bi-weekly pay is \$1,800.38, gross, and \$1,442.71 after the deduction of taxes. Debtors' average take-home pay is \$1,315.01 bi-weekly, which accounts for the deduction of taxes, voluntary contributions to various benefit plans, an \$8.00 per week deduction for Mr. Liebl's work uniforms, and occasional deductions for Mr. Liebl's work tools. Extrapolated over one year, these figures indicate that Debtors have an annual gross income of \$46,809.88, annual after-tax income of \$37,510.46, and annual take-home pay of \$34,190.26. Based on the year-to-date figures indicated on Mr. and Mrs. Liebl's most recent pay advices, dated 10/27/2006 and 10/16/2006 respectively, Debtors' year-to-date gross income is \$31,049.48 and Debtor's year-to-date after-tax income is \$25,376.45. Assuming Debtors continue to earn at this rate for the remainder of 2006, Debtors' annual gross income will be approximately \$37,259.36 and Debtors' annual after-tax income will be approximately \$30,451.74.

The Judicial Conference Procedures Regarding Fee Waivers in Chapter 7 cases do not define whether the income which is to be compared to the poverty level is before tax income or after tax income. Given the purpose of the fee waiver, after-tax income seems the most appropriate standard since only after-tax income is available to Debtors to pay the

filing fee. According to the figures calculated using Debtors' average pay and the year-to-date amounts on Pay Advices, Debtors' annual after-tax income is at least \$5,000 to \$9,000 higher than 150% of the official poverty line for a family of 3. Even Debtors' actual take-home income, accounting for tax and non-tax related deductions including dental and vision insurance and IRA contributions, but not accounting for deductions related to Mr. Liebl's work uniforms and tools, exceeds 150% of the official poverty line for a family of 3.

Considering the totality of the circumstances, the Court finds that Debtors do not meet the fee waiver eligibility requirements set forth in 28 U.S.C. § 1930(f) and have failed to meet their burden of demonstrating that their Application should be granted.

Accordingly, it is

ORDERED that the application is **DENIED**; however, to allow Debtors an opportunity to pay the filing fee, it is further

ORDERED that Debtors shall either (1) pay the Chapter 7 filing fee in full (\$299) within ten (10) days of the date of the entry of this Order, or (2) begin making installment payments as follows:

\$ 75.00 on or before 10 days from the date of the entry of this Order.

\$ 75.00 on or before 40 days from the date of the entry of this Order.

\$ 75.00 on or before 80 days from the date of the entry of this Order.

\$ 74.00 on or before 120 days from the date of the entry of this Order.

If Debtors fail to timely pay the filing fee as set forth above, this case will stand as dismissed.

The Clerk shall serve a copy of this order upon Debtors and the Chapter 7 Trustee.

SO ORDERED this the 9th day of November, 2006.


MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE